Before the
Federal Communications Commission
Washington, DC

In the Matter of:

Schools and Libraries Support Mechanism	)	Docket Number 02-6

Reply Comments of Greg Weisiger

It is my pleasure to offer reply comments on the Schools and Libraries Program Third Report and Order and NPRM under FCC docket number 02-6. The comments offered by applicants and service providers encompassed a wide range of thoughtful and well documented suggestions. I trust the politically challenged wheels of federal bureaucracy will carefully consider comments and replies when implementing clear, concise regulations for this overwhelmingly complicated program. I also trust the same federal bureaucracy will spray several cans of WD40 in the works to help expedite the process.

Comments of Note

Recovery of Funds

I agree entirely with the comments of SBC Communications. SBC devoted their entire comments to the issue of fund recovery making excellent suggestions. SBC urged the Commission to consider the following when revising the Commitment Adjustment Order:

• Funds generally should be recovered from the party responsible for, or that benefited from, the improper disbursement.
• No funds should be recovered when improperly disbursed due to errors of the Administrator.
• No funds should be recovered where recovery is not cost-effective.
• Recovery should be waived for rule violations that are minor or do not materially undermine the integrity or policies of the program.
• Parties should have an opportunity to contest recovery.

The only additional suggestion I would make is in the instance of post-work, pre-payment category of Commitment Adjustment many applicants face. This issue was detailed in my initial comments in the chapter titled “Be Very, Very Careful before taking Money from School Children.”

The Administrator began reviewing invoices for compliance with program rules. Not a bad idea considering various reports of attempts to defraud the program at the invoice stage. When the Administrator discovered invoices that did not comply with rules or policies, some outside the Commitment Adjustment Order, it would simply withhold payment and issue a commitment adjustment letter to the service provider or applicant, depending on the type of invoice – a SPI or BEAR. The problem is when the Administrator issued commitment adjustment letters and withheld payments, it denied due process to applicants. The Administrator effectively and illegally seized funds granted applicants under Congressional Act. Many commenters urged the Commission to allow applicants the opportunity to contest commitment adjustments before commitment adjustment is made. If payment is held by the Administrator, the process of claiming seized funds could take years if escalated to the level of FCC appeal, where the current E-Rate appeal backlog is approaching an unconscionable two years!

The Commission must also recognize that withholding payment for BEAR submissions is the legal equivalent of recovering funds directly from applicants, as applicants must certify that they have paid full price for services to service providers before submitting the BEAR form to the Administrator. This is in direct conflict with Commission order to seek recovery of funds from service providers. This may of course change when the Commission issues its next order; however, the fact remains that the Administrator is violating the Commitment Adjustment Order and the Telecommunications Act on a number of fronts.

Complex and Confusing Regulations and Policies

I was delighted to see almost unanimous agreement from commenters that the program is exceedingly complex from both a regulatory and a policy standpoint. I hope the Commission uses this opportunity to cut some regulation and policy from a program many agree is out of control with a patchwork of incremental fixes designed to alleviate real or perceived ills. History shows such micromanagement results in programs no one can live with.

Marginal and small dollar applicants have voted with their feet against the E-Rate program by giving up. When calling on a number of applicants who have not filed Forms 486 for funds *already committed,* the applicants indicated that they would not file the forms and would not seek funding in future years. They said the program paperwork and labor requirements do not justify the five hundred or a thousand dollars in discounts they receive annually. Typically these discounts will be for basic telephone service or Internet access – the very services the Telecommunications Act intended schools and libraries to receive at discounts. Year Seven demand figures reported by the Administrator for Priority One services confirms reduced demand.

The two other pillars of Universal Service – High Cost and Low Income – appear to be doing just fine from an end-user perspective. The High Cost fund ensures farmers in Montana pay roughly the same price for telephone service as city dwellers in Boston – without requiring either the farmer or urbanite to fill out form one. The Low Income

program provides subsidies to poor Americans ensuring life–line telephone service is available – with a minimum of paperwork.

The Schools and Libraries program can be simplified. The program can be streamlined. The program can be regulated and administered fairly. Waste and fraud can be reduced. If the Commission would heed the following suggestions:

The Form 470 Must Go!

I was also delighted to see approximately half of the comments urging massive overhaul or outright elimination of the Form 470! As noted, it does not promote competition, it increases the likelihood of funding denial, and it can in fact LIMIT competition.

The Commission must order the Administrator to use some type of *economic reasonableness test* for evaluation of funding requests. Some provision for the cost of services in Alaska, Hawaii, Guam, and Trust Territory must be part of the test. Competitive bidding could be another certification on the form 471. The Commission could require all applicants –both public and non-public to adhere to state and local procurement laws in order to participate in the E-Rate program. For states without public procurement laws and for final evaluation of applications, price reasonableness evaluation will be decisive.

A cursory look at the Administrator's funding request database, known as the Data Retrieval Tool, reveals numerous examples of incredible waste. After "thorough review" by the Administrator, many of the same wasteful requests are funded! The recent indictment of a number of individuals in Wisconsin points to a *horrific* lapse in Administrator review. The funding requests were so far out of line with any measure of "reasonableness" that they should have immediately been given much greater scrutiny than other applications. This incident will unfortunately resonate in the halls of Washington government offices, somewhat rightly, as an example of a well intentioned program run amok. We can only pray the alleged fraud was motivated by greed and nothing more sinister.

I am however encouraged that the Commission mentioned "economically reasonable" in the Third Order when talking about funding requests. Third Order at 23:

> We find that the use of discounts to fund duplicative services contravenes the requirement that discounts be awarded to meet the "reasonable needs and resources" of applicants. We find that requests for discounts for duplicative services are unreasonable because they impact the fair distribution of discounts to schools and libraries.

It is high time the Commission require applicants and reviewers to evaluate discount requests on the basis of benchmarks of connectivity such as bandwidth and/or cost per

student for Wide and Local Area Networks and connectivity, with the aforementioned high-cost exceptions.

Replace the Administrator, Revisited

In my initial comments I included a somewhat sarcastic piece on the competence of the Administrator and suggested the Commission post a Form 470, issue an RFP, wait at least 28 days and hire a new administrator. That suggestion is impractical and should be taken in its literary context. Commission regulation established that the core of the administrative function should occur in the immediate Washington DC area. The Administrator problem is not the DC operation per se, rather a perfect storm of confluences that result in mistreatment of applicants. That is not to say all personnel in the Washington offices possess qualifications for the role of effective Administrator.

Kansas

The Administrator's Kansas operation has for many years been the butt of many of my comments, appeals, letters to SLD Board members and Commission testimony in the May 8, 2003 Forum. Unfortunately, the Kansas operation remains THE Achilles Heel of the entire program.

Without rehashing the charges against the Kansas operation in this filing, one can view my filings as far back as 1999 with substantiated claims of negligence or outright incompetence from the Kansas contractor. I am amazed that the SLD Board or the Commission has let the situation go on as long as it has without drastic modification to the existing contract! The Administrator or the FCC must address the Kansas situation.

New Jersey

The New Jersey operation is somewhat better but can stand substantial improvement as well. I stand by my initial comments that the relationship between NECA and USAC is indeed "incestuous." That notion was confirmed in a Washington Post story on April 9 titled "Carrier-Fees Agency Suspends Executives 3 Accused of Taking Outside Bonuses." In this case the bonuses were paid to NECA Services, which holds the contract for some administrative functions for the Administrator. The contract with the New Jersey operation may include bonuses indicated in the Post story. The bonuses, legal or not, do not however provide *proper* incentive for timely review of applications. Apparently NECA stands to receive incentive bonuses if it completes review on at least 90 percent of pending applications before July 1 of the funding year. It is clear NECA reviews the smallest and easiest applications first leaving large and difficult applications last. Once July 1 has passed, there appears to be no penalty for review delay with the thousands of applications still in review. Even as these comments are submitted, the New Jersey operation is pushing hard on review of Year Seven applications, while some Year Six applicants have not even been contacted! Thanks to testimony before the Commission on May 8, and work of the Waste, Fraud,

and Abuse Taskforce, the Administrator has implemented plans for expedited review of high-dollar and complex applications.

The contract for outsourced Administrator functions will expire next year. The SLD Board and Commission should consult applicants, vendors and other interested parties for suggestions on specific contract requirements and incentives for future contractors. Current contractors should not be allowed to bid on the new RFP.

The Commission Should Look in the Mirror

The Commission shares equal blame for the current state of E-Rate. Literally every word on the Administrator Web site must be reviewed by someone at the Commission. Consequently, necessary applicant advice is not posted in a timely manner resulting in often outdated and incorrect information posted on the Administrator website. As these comments are submitted, there are glaring inaccuracies, contradictory information and omissions of vital materials on the Administrator Web site.

In previous comments I have urged the Commission to establish a weekly communication regiment between the Administrator and the Commission. It is imperative the Administrator receive rapid response on critical issues, as the Administrator is forbidden from setting policy of any kind.

Another tragic consequence of understaffing at the Commission is the E-Rate appeal backlog. Standard advice from the applicant community is "appeal ALL denials." Virtually all Commission E-Rate decisions from Ysleta to Copan confirm this advice. Consequently, the Commission has *hundreds* of appeals awaiting decisions. The appeal backlog at the Commission is currently over a *year and a half – six times the 90 days for review under Commission regulation.* This situation is beyond unconscionable. Applicants denied funding, even well before the funding year starts, have almost zero chance of seeing a decision on their appeal during the funding year – unless they are from a well connected (politically) state such as Maine, while North Dakota is left out in the cold. Shame, shame, shame.

Conclusion

The E-Rate program has provided billions of dollars to schools and libraries for telecommunications, Internet access, and building infrastructure. The program is the largest single funding source for ensuring schools and libraries stay connected to vital services.

The Commission has done an admirable job attempting to balance the need to prevent waste and abuse and the desire to make life less complicated for applicants wishing to participate in this entitlement-like program. Looking back at a list of suggestions the State E-Rate Coordinators' Alliance (then the CCSSO E-Rate Alliance) made to the Commission in 1999, every one of the suggestions has been implemented

during the subsequent years. However, sometimes more restrictive regulations have been implemented to address new, unimagined abuses.

Wrongdoers, wasteful practices, and abuses must be eliminated to the extent reasonably possible. The Commission must take care however to enact regulation that does not have the unintended consequence of penalizing innocent applicants. Mastermind is one example. Ysleta may be another, as this is the first year of application evaluation under the Ysleta Decision.

Persons, schools, libraries or companies found to grossly waste program resources should be barred from participation for a number of years. Persons, schools, libraries or companies found to defraud or attempt to defraud the program should be subject to federal prosecution and lengthy jail sentence. On the other hand, persons, schools, libraries or companies requesting reasonable discounts for eligible services but caught in any number of Catch 22's this program is becoming infamous for, should be granted timely *and liberal* waivers by the Commission such that the affected students or library patrons may continue to receive services without interruption. Because a federal bureaucracy is unable to adhere to its own internal regulations is no excuse for curtailing services from deserving schools or libraries.

I look forward to working with the Commission and other interested parties for improvement of this innovative and nationally essential program.

Respectfully submitted this Ninth day of April, 2004

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These reply comments are my own and do not necessarily represent views of the commonwealth of Virginia or the State E-Rate Coordinators' Alliance, of which I am an employee and member, respectively.